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Group, Inc., CXO Media, Inc. and Steve Ragan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RIVER CITY MEDIA, LLC, a Wyoming
limited liability company, MARK
FERRIS, an individual, MATT FERRIS,
an individual, and AMBER PAUL, an
individual,

Plaintiffs,

vs.

No. 2:17-cv-105-SAB

DEFENDANT CXO MEDIA, INC.'S
MOTION FOR PROTECTIVE ORDER

Hearing Date: February 5, 2018 @ 6:30 pm
Without Oral Argument

DEFENDANT CXO MEDIA, INC.'S MOTION FOR
PROTECTIVE ORDER
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1 KROMTECH ALLIANCE
2 CORPORATION, a German corporation,
3 CHRIS VICKERY, an individual, CXO
4 MEDIA, INC., a Massachusetts
5 corporation, INTERNATIONAL DATA
6 GROUP, INC., a Massachusetts
7 corporation, and STEVE RAGAN, an
individual, and DOES 1-50,

Defendants.

8 Defendant CXO Media, Inc. ("CXO") respectfully submits this Motion for
9 Protective Order as follows:

10 **Introduction**

11
12 Plaintiff River City Media, LLC ("RCM") is one of the world's largest spamming
13 operations, run by co-Plaintiffs/co-conspirators Amber Paul, Mark Ferris, and Matt
14 Ferris. Plaintiffs' operation has sent billions of unwanted emails. Plaintiff Matt Ferris,
15 one of the principals of RCM, has even mocked the recipients: "AWWWW How terrible
16 that we have to friggin DELETE EMAIL from our inboxes."¹ This comment came in the
17 midst of Ferris defending his friend Robert Soloway, who was indicted on charges of
18 aggravated identity theft, fraud in connection with electronic mail, money laundering,
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23 ¹ [https://www.spamhaus.org/rokso/evidence/ROK7714/matt-ferris-river-city-media-](https://www.spamhaus.org/rokso/evidence/ROK7714/matt-ferris-river-city-media-acetech-usa/ferris-defends-robert-soloway-and-the-right-to-spam)
24 [acetech-usa/ferris-defends-robert-soloway-and-the-right-to-spam.](https://www.spamhaus.org/rokso/evidence/ROK7714/matt-ferris-river-city-media-acetech-usa/ferris-defends-robert-soloway-and-the-right-to-spam)

1 mail fraud, and wire fraud.² RCM has also become a well-known purveyor of text
2 messaging using auto-dialers, blasting unsolicited text messages to millions of
3 nonconsenting recipients.³ Ferris previously ran a “spam-friendly” ISP, assisting entities
4 with creative names like “Bulk Marketing, Inc.” to send millions of unwanted spam
5 emails.⁴

7 Now, Plaintiffs want to prevent defendants, including CXO, from protecting their
8 highly-confidential, commercially-sensitive, proprietary documents through a protective
9 order. In other words, the very people who are *least* likely to use the documents in a way
10 that protects their confidentiality want to preclude defendants from obtaining Court

12
13 ² See *United States v. Robert Alan Soloway*, No. 2:07-cr-00187-MJP (W.D. Wash.) at
14 ECF No. 1, Indictment.

15 ³ See, e.g., *Keating v. Peterson's Nelnet, LLC*, 615 F. App'x 365, 368 (6th Cir. 2015)
16 (“River City Media would transmit that advertisement through text messaging using an
17 auto-dialer. . . . Ferris stated further that although he thought that River City Media was
18 using a list of recipients who had consented to the receipt of text messages, his company
19 never took steps to insure that the recipients of the text messages actually had consented
20 to receiving such advertisements.”).

21 ⁴ See *Hodgell v. Bulk Marketing, Inc.*, No. 05-2-13730-4SEA (Super. Ct. of Wash.) at
22 Pl.’s Resp. in Opp. To Def. Acetech’s Mot. to Dismiss, 2005 WL 4987183 (discussing
23 declaration of “Matt Ferris” offered in support of Acetech, which was a “spam-friendly
24 ISP” that “conspire[ed] with and assist[ed]” Bulk Marketing Inc., “a notorious spam
violin”).

1 protection. The fox not only wants to guard the henhouse, it opposes even a small (and
2 transparent) gate around it. CXO asks the Court to enter a limited protective order
3 protecting CXO's highly confidential documents. CXO attaches the declaration of Matt
4 Smith in support. Co-defendants International Data Group, Inc., Steve Ragan, and
5 Kromtech Alliance Corporation are not opposed.⁵ Only Plaintiffs oppose, although
6 Plaintiffs themselves have marked documents "confidential" in their production.⁶
7
8 CXO is aware of the Court's concern regarding open courts, and CXO shares that
9 concern. This is an unusual case with unusual parties that have a habit of misusing
10 information. CXO tried and failed to come to an agreement with Plaintiffs. A very
11 limited protective order is necessary. CXO requests a telephonic hearing.
12

13 Background

14
15 Plaintiffs RCM and Matt Ferris are well known to the Register of Known Spam
16 Operations ("ROKSO"), which "is a register of spam senders and spam services that have
17 been thrown off Internet Service Providers 3 times or more in connection with spamming
18
19
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21 ⁵ CXO's counsel reached out to co-defendant Chris Vickery's counsel regarding whether
22 Mr. Vickery opposed but did not hear back.

23 ⁶ This includes a "confidential" designation on a very damning message in which one of
24 RCM's principals makes an alarming admission about RCM's nefarious activities.

1 or providing spam services, and are therefore repeat offenders.”⁷ ROKSO “collates
2 information and evidence on each spam operation to assist ISP Abuse Desks and Law
3 Enforcement Agencies.”⁸ ROKSO is compiled by the Spamhaus Project. The FBI-
4 established, nonprofit National Cyber Forensics and Training Alliance has awarded the
5 Spamhaus Project for its efforts.⁹ Indeed, the FBI has worked with the Spamhaus Project
6 in the past.¹⁰ As one nightly news commentator put it, the Spamhouse Project attempts
7 “to make the worst spammers in the world very famous.”¹¹
8

9
10 The ROKSO file on Plaintiffs RCM and Matt Ferris is massive.¹² According to
11 ROKSO, “Matt Ferris runs a spam operation hooked up with many other spammers
12

13
14 ⁷ <https://www.spamhaus.org/faq/section/ROKSO%20FAQ>.

15 ⁸ *Id.*

16 ⁹ <https://www.spamhaus.org/organization/ncftaaward/>.

17 ¹⁰ See Spamhaus Project, *Popular Spammer Myths About Spamhaus*, <https://www.spamhaus.org/organization/statement/013/popular-spammer-myths-about-spamhaus>; see
18 also Testimony of Steven M. Martinez (FBI) to House Committee on Small Business
19 Regulatory Reform and Oversight Subcommittee (Mar. 16, 2006), <https://archives.fbi.gov/archives/news/testimony/small-business-cyber-security>.
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21 ¹¹ Transcript, Rachel Maddow Show (Apr. 10, 2017), *available at*
22 <http://www.msnbc.com/transcripts/rachel-maddow-show/2017-04-10>.

23 ¹² [https://www.spamhaus.org/rokso/evidence/ROK6479/matt-ferris-river-city-media-](https://www.spamhaus.org/rokso/evidence/ROK6479/matt-ferris-river-city-media-acetech-usa/main-info)
24 [acetech-usa/main-info](https://www.spamhaus.org/rokso/evidence/ROK6479/matt-ferris-river-city-media-acetech-usa/main-info).

1 including Bill Waggoner, Urbanmyth Productions / Richard Fragiacommo, etc.”¹³ Matt
2 Ferris is a principal of RCM, and ROKSO notes that both RCM and Ferris are directly
3 linked with fellow world-famous spammer Acetech USA, Inc. (“Acetech”).¹⁴ Indeed,
4 Plaintiff Matt Ferris ran (or runs) Acetech, which is a “spam-friendly ISP.”¹⁵ Plaintiff
5 Matt Ferris has a host of shell companies through which he runs the spam-spewing
6 empire.¹⁶ According to Plaintiffs, co-Plaintiffs Amber Paul and Mark Ferris also run the
7 spam empire. *See* Compl. (ECF No. 1) ¶ 1 (noting “Matt Ferris, Mark Ferris, Amber
8 Paul, and others have operated [RCM] . . .”).

11 RCM’s nefarious spamming activities extend beyond just emailing. In *Keating v.*
12 *Peterson’s Nelnet, LLC*, the Sixth Circuit noted that RCM had entered into a contract
13 with an advertising company under which RCM was supplied “with language to be used
14 in an advertising campaign . . . and River City Media would transmit that advertisement
15 through text messaging using an auto-dialer.” *Keating v. Peterson’s Nelnet, LLC*, 615 F.
16 App’x 365, 368 (6th Cir. 2015). The Sixth Circuit noted that Plaintiff Matt Ferris

19 ¹³ *Id.*

20 ¹⁴ *Id.*

21 ¹⁵ *Hodgell v. Bulk Marketing, Inc.*, No. 05-2-13730-4SEA (Super. Ct. of Wash.) at Pl.’s
22 Resp. in Opp. To Def. Acetech’s Mot. to Dismiss, 2005 WL 4987183.

23 ¹⁶ *See* [https://www.spamhaus.org/rokso/evidence/ROK6479/matt-ferris-river-city-media-](https://www.spamhaus.org/rokso/evidence/ROK6479/matt-ferris-river-city-media-acetech-usa/main-info)
24 [acetech-usa/main-info](https://www.spamhaus.org/rokso/evidence/ROK6479/matt-ferris-river-city-media-acetech-usa/main-info).

1 testified on behalf of RCM that “although he thought that River City Media was using a
2 list of recipients who had consented to the receipt of text messages, his company never
3 took steps to insure that the recipients of the text messages actually had consented to
4 receiving such advertisements.” *Id.* In that case, the plaintiff, who had received an
5 unsolicited text message, sued the upstream advertising company rather than RCM, so
6 there was a question of whether RCM’s illegal conduct could be attributed to the
7 upstream advertising company under an agency theory; the court concluded in the
8 negative. *See id.* at 371-72 (noting RCM “sent the unauthorized text messages to the
9 putative plaintiff class” but that RCM’s illegal conduct could not be attributed to the
10 defendants under an agency theory).

11
12
13 Plaintiffs admit that one of Plaintiff RCM’s principals is Alvin Slocombe. *See*
14 Compl. (ECF No. 1) ¶ 61. RCM’s Mr. Slocombe, who uses aliases such as “RCM
15 Delivery,” has been described as the number 5 spammer in the world, behind only a
16 Russian outlet, an Eastern European outlet of unclear origins, and two individuals from
17 New Jersey and Florida.¹⁷ ROKSO has an extensive file on RCM’s Mr. Slocombe, which
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23 ¹⁷ *See* [https://accraconnect.com/semalt-expert-defines-worlds-top-10-spammers-2017-](https://accraconnect.com/semalt-expert-defines-worlds-top-10-spammers-2017-stay-safe/)
24 stay-safe/.

1 confirms what Plaintiffs have to (and do) admit – that Mr. Slocombe is one of the
2 principal operators of Plaintiff RCM.¹⁸

3
4 In short, Plaintiffs are precisely the type of nefarious individuals that a legitimate
5 business like CXO does not want holding its confidential information unless there are
6 restrictions in place on how the information can be used and distributed.

7
8 At the Court's suggestion, CXO tried to work out the confidentiality issues with
9 counsel for all parties by way of a proposed agreement that it drafted and circulated.
10 Unfortunately, Plaintiffs not only opposed the agreement but flatly opposed any
11 confidentiality. In fact, when CXO conferred with Plaintiffs' counsel for this motion,
12 Plaintiffs' counsel refused to even provide dates of availability for a telephonic hearing
13 on this motion.
14

15 Argument

16 “The Ninth Circuit recognizes that district courts have great flexibility to protect
17 documents that contain confidential or commercially sensitive information.” *Cabell v.*
18 *Zorro Prods., Inc.*, 294 F.R.D. 604, 610 (W.D. Wash. 2013) (citing, inter alia, *Phillips ex*
19 *rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (“The law
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23 ¹⁸ See [https://www.spamhaus.org/rokso/evidence/ROK9829/alvin-slocombe-cyber-world-](https://www.spamhaus.org/rokso/evidence/ROK9829/alvin-slocombe-cyber-world-internet-services/main-info)
24 [internet-services/main-info](https://www.spamhaus.org/rokso/evidence/ROK9829/alvin-slocombe-cyber-world-internet-services/main-info); see Compl. (ECF No. 1) ¶ 61.

1 . . . gives district courts broad latitude to grant protective orders to prevent disclosure of
2 materials for many types of information, including, but not limited to, trade secrets or
3 other confidential research, development or commercial information.”)). Under Rule
4 26(c), the Court “may, for good cause, issue an order to protect a party or person from
5 annoyance, embarrassment, oppression, or undue burden or expense, including one or
6 more of the following: . . . requiring that . . . confidential research, development, or
7 commercial information not be revealed or be revealed only in a specified way”
8 Fed. R. Civ. P. 26(c)(1)(G); *see Cabell*, 294 F.R.D. at 610 (holding **in context of**
9 **jurisdictional discovery** that protective order was warranted where request included
10 commercial information that, if released, could harm producing party).
11

12
13 Although the party seeking a protective order must show good cause, courts also
14 consider whether the party opposing the protective order has demonstrated that the
15 protective order will prejudice that party. *See, e.g., Cabell*, 294 F.R.D. at 610 (“Mr.
16 Cabell has not established that restricting disclosure of the designated confidential and
17 commercially sensitive information to his attorneys will prejudice his ability to
18 demonstrate personal jurisdiction over Defendant.”); *UCC Ueshima Coffee Co., Ltd. v.*
19 *Tully's Coffee Corp.*, No. C06-1604RSL, 2007 WL 710092, at *2 (W.D. Wash. 2007)
20 (noting non-moving party’s inability to demonstrate that attorney’s eyes only
21 designations would prejudice its case weighed in favor of granting protective order).
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1 Here, Plaintiffs have requested extremely sensitive financial information, such as
2 the number of views of the article at issue, the amount of revenue earned by CXO from
3 the article, and the location of viewers of the article. *See* Ex. 2 at Interrogatory No. 5 and
4 Request for Production No. 6. These documents and information were generated in the
5 course of CXO's business and are not generally known or readily available to CXO's
6 competitors, other businesses, or the public in general. *See* Ex. 1, Smith Decl. ¶ 4. CXO
7 undertakes great efforts to keep it secret. *See id.* The release of this information would
8 result in great harm to CXO. *See id.* ¶ 5. For example, it would provide CXO's
9 competitors not only a pricing advantage but an advantage in determining what strategies
10 to utilize. *See id.*

11 Plaintiffs have also requested sensitive commercial information regarding the
12 corporate structure of CXO and its corporate relationship with other entities. *See* Ex. 1 at
13 Request for Production No. 1 ("Produce all Documents related to CXO Media's
14 corporate structure, including all subsidiaries, parent companies, holding companies, and
15 any company holding more than a 10% interest in CXO Media") (emphasis in original).
16 Aside from being overly broad, the request covers a highly confidential organizational
17 chart. Again, this information is not known to the public; CXO takes great pains to keep
18 it secret; and its release would substantially harm CXO's competitive position. *See* Ex. 1,
19 Smith Decl. ¶¶ 3-5. CXO is not asking the Court to keep every responsive document

1 from Plaintiffs. CXO is only asking that limitations be placed on how Plaintiffs can
2 disburse certain information produced in response.

3
4 Further, Plaintiffs can show no prejudice as a result of the limited protected order
5 that CXO proposes. Under the order, Plaintiffs can still use any document in this case
6 produced by CXO (or any other party). *See* Proposed Order. The protective order simply
7 outlines the manner in which Plaintiffs may use the documents. Perhaps this is why only
8 Plaintiffs oppose the protective order.¹⁹ As shown above, Plaintiff RCM and its operators
9 (Plaintiffs Matt Ferris, Mark Ferris, and Amber Paul, and non-party operator Alvin
10 Slocombe) have an extremely checkered past. To allow these individuals to receive
11 highly sensitive documents and information from CXO with no restriction on how they
12 may disburse them will result in substantial harm to CXO as described above and in Matt
13 Smith's declaration.
14
15

16 Because CXO has demonstrated good cause in the form of substantial harm it will
17 suffer if its highly confidential, commercially-sensitive documents are not protected, the
18 Court should enter the proposed Protective Order attached hereto.
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21 ¹⁹ Co-defendants Steve Ragan, International Data Group, Inc., and Kromtech Alliance
22 Corporation do not oppose this motion. Counsel for CXO reached out to co-defendant
23 Chris Vickery's attorneys to see if Mr. Vickery was opposed but did not receive a
24 response.

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Respectfully submitted this 5th day of January, 2018.

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1 I hereby certify that on January 5, 2018, I electronically filed the foregoing with
2 the Clerk of the Court using the CM/ECF System which will send notification of such
3 filing to the following:
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1
2 The undersigned hereby certifies under penalty of perjury under the laws of the
3 State of Washington that on the 5th day of January, 2018, at Spokane, Washington, the
4 foregoing was caused to be served on the following person(s) in the manner indicated:
5

6 Edward Chung 7 Chung, Malhas & Mantel, PLLC 8 1511 3 rd Ave., Suite 1088 9 Seattle, WA 98101-3635 echung@cmmlawfirm.com	VIA REGULAR MAIL <input checked="" type="checkbox"/> VIA EMAIL <input checked="" type="checkbox"/>
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